

No. 75-1845

Supreme Court, U. S.

FILED

OCT 20 1976

MICHAEL BODAK, JR., CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1976

JAMES STRYKER and WALTER WOITOVICH,
Petitioners,

vs.

THE VILLAGE OF OAK PARK, ILLINOIS and
BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE VILLAGE OF OAK PARK, ILLINOIS,
Respondents.

Petition for Writ of Certiorari to the Supreme Court
of Illinois

BRIEF FOR RESPONDENT IN OPPOSITION

ARTHUR C. THORPE
KLEIN, THORPE, KASSON & JENKINS
111 W. Washington Street
Chicago, Illinois 60602
FL 6-9740
Attorney for Respondents

INDEX

| | PAGE |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| JURISDICTION | 1 |
| ORDINANCES INVOLVED | 2 |
| QUESTIONS PRESENTED | 3 |
| STATEMENT OF CASE | 3 |
| ARGUMENT | 4 |
| THE FEDERAL CONSTITUTIONAL ISSUES WERE NEVER PROPERLY RAISED IN THE TRIAL COURT OR ILLINOIS SUPREME COURT | 4 |
| THE VILLAGE OF OAK PARK DID NOT DE- PRIVE PETITIONERS OF ANY FEDERAL CONSTITUTIONAL RIGHT BY CREATING THE NON-CIVIL SERVICE POSITION OF DEPUTY CHIEF OF POLICE | 7 |
| CONCLUSION | 8 |

CITATIONS

| | |
|----------------------------------------------------------------------------------------------------|------|
| <i>Bishop v. Wood</i> , #74-1304, 44 L.W. 4820 | 7 |
| <i>Louisville and Nashville Railway Company v. Wood-</i> <i>ford</i> , 234 U.S. 46 (1913) | 4, 6 |
| <i>Memphis Gas v. Beeler</i> , 315 U.S. 651 (1941) | 5 |
| <i>Pennsylvania R. Co. of Illinois</i> , 297 U.S. 447 (1935) .. | 4 |
| <i>Zehender and Factor, Inc. v. Murphy</i> , 386 Ill. 244 (1944) | 6 |

APPENDIX

Amended Complaint for Declaratory Judgment ..A1 to A10

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 75-1845

JAMES STRYKER and WALTER WOITOVICH,
Petitioners,

vs.

THE VILLAGE OF OAK PARK, ILLINOIS and
BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE VILLAGE OF OAK PARK, ILLINOIS,
Respondents.

Petition for Writ of Certiorari to the Supreme Court
of Illinois

BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The Opinion of the Illinois Supreme Court is reported
at 343 N. E. 2d 919.

JURISDICTION

Petitioners allege jurisdiction pursuant to 28 U.S.C.
Sec. 1257 Subsection 3. Respondents deny the jurisdic-
tion of this Court on the basis that the jurisdictional

issues were not raised in the Trial Court or the Illinois Supreme Court.

ORDINANCES INVOLVED

The following are the ordinances involved in this proceeding relating to the position of Deputy Chief of Police:

AN ORDINANCE AMENDING CHAPTER 36 OF THE CODE OF THE VILLAGE OF OAK PARK

BE IT ORDAINED by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, that Chapter 36 of the Code of the Village of Oak Park is amended as follows:

SECTION 1: That Section 36.1 is amended to read as follows:

Sec. 36.1 Composition; Office of Policeman Created: Residency.

The Police Department of the Village of Oak Park is hereby created and established. It shall consist of a chief of police, three (3) deputy chiefs of police and such other officers and personnel as shall be determined by the President and Board of Trustees in the annual Appropriation Ordinance. The position of captain in the Police Department is eliminated effective at such time as the incumbents, as of January 1, 1974, no longer hold said position.

Police officers appointed after October 1, 1973, shall not be required to comply with the residency requirements of Article 3-14-1 of the Illinois Municipal Code during the probationary period of one year plus an additional six months. Said police officers must become residents of the Village of Oak Park within said 18 month period.

SECTION 2: That the first paragraph of Section 36.8 of the Code of the Village of Oak Park is amended to read as follows:

Sec. 36.8 Appointment and Suspension of Members by Board of Fire and Police Commissioners.

The Village Manager is authorized to appoint, suspend or discharge the chief of police and the three deputy chiefs of police. The power of appointment, discharge or suspension of all other officers of the police department shall be in the board of fire and police commissioners of the village, heretofore created and now acting pursuant to the provisions of the Illinois Municipal Code. In the event the Village Manager discharges the chief of police or a deputy chief of police, said officers shall revert to their permanent ranks, if any, in the police department as established under the Fire and Police Commission Act. A deputy chief of police shall be appointed solely from the officers of the Oak Park Police Department.

QUESTIONS PRESENTED

Whether this Court will consider an appeal where the Federal Constitutional questions were not raised in the Trial Court and not argued or considered in the Illinois Supreme Court.

Whether the Village of Oak Park Ordinances creating the rank of Deputy Chief of Police to be appointed by the Village Manager and abolishing the Civil Service rank of Captain violate the Federal Constitutional rights of the plaintiffs, Patrolman Stryker and Sergeant Woitovich.

STATEMENT OF THE CASE

Petitioners' statement is adopted.

ARGUMENT

I.

THE FEDERAL CONSTITUTIONAL ISSUES WERE NEVER PROPERLY RAISED IN THE TRIAL COURT OR ILLINOIS SUPREME COURT.

The United States Supreme Court requires that federal constitutional issues must be properly raised in the state courts in accordance with each state's practices and procedures and that absent proper conformity with state procedure the Supreme Court will not review the federal constitutional issues.

In *Louisville and Nashville Railway Company v. Woodford*, 234 U.S. 46 (1913), the Court rejected consideration of a federal claim where the State Appellate Court ruled the federal claim was improperly raised for the first time in the motion for new trial. The Court stated:

(Page 51)

"The decisions of this Court not only have repeatedly held that a federal right in order to be reviewable here must be set up and denied in the state court but have often held that such claim of denial is not properly brought to the attention of this court where it appears that the state court declined to pass upon the question because it was not raised in the trial court as required by the state practice."

Again, in *Pennsylvania R. Co. v. Illinois*, 297 U.S. 447 (1935) the Court refused to consider petitioner's challenge that a reparation order violated the due process clause of the Fourteenth Amendment where the petitioner had failed to properly challenge the constitutionality of the order in the trial court as required by Illinois practice

and the Illinois Supreme Court had declined to consider the federal issues for this same reason. The Court explained, "As the highest court of the State declined to consider (the issues) because not raised in the circuit court or presented to it in accordance with practice that unquestionably was well established and reasonable, this court is without jurisdiction to consider either of them." (Page 462)

Similarly, in *Memphis Gas v. Beeler*, 315 U.S. 651 (1941), the Court cited *Pennsylvania R. Co. v. Illinois*, in rejecting consideration of a taxpayer's federal rights with respect to a state tax assessment for failure to properly raise the issue in the appropriate Tennessee Court. The Supreme Court articulated its rationale for so rejecting the claim, explaining:

(Page 650-651)

"It is not enough that an appellant could have bunched his attack upon the validity of the statute itself as applied; if he has failed to do so, we are without jurisdiction over the appeal. The judicial code was intended to restrict our obligatory appellate jurisdiction to a narrow class of cases, and to foreclose an appeal as of right whenever the prescribed conditions have not been rigorously fulfilled."

The Amended Complaint is attached to this Brief. There is no reference in it to any federal constitutional issue. No such issue was raised in the proofs as the Trial Court entered its judgment solely on the pleadings.

On appeal to the Illinois Supreme Court, the petitioners in point 5 of their brief mention the Equal Protection Clause of the United States Constitution, but do not cite a single case relevant to or even mentioning the federal constitutional issue. (See Petition for Writ of Certiorari, pages A-37 and A-38).

Illinois law requires that the constitutional issue be first raised in the trial court. In *Zehender and Factor, Inc. v. Murphy*, 386 Ill. 244 (1944), the Illinois Supreme Court refused to consider appellant's claim that a certain state statute violated both sections of the Illinois constitution and amendments of the federal constitution when appellant failed to plead this point at the trial level. The Court stated:

(Page 261)

"It has been many times held by this court that the question of the constitutionality of a statute cannot be properly raised for the first time in this court but must have been called to the attention of the trial court and ruled upon it, and the person challenging its validity must have preserved proper exceptions."

In their jurisdictional statement before this Court, petitioners state that the federal constitutional question was analyzed in the Illinois Supreme Court opinion (See pages A-5 and A-6 of the Petition). There is not, however, even the remotest reference to a federal constitutional issue found in the Illinois Supreme Court decision.

The raising of the federal constitutional issue by petitioners in their petition for rehearing before the Illinois Supreme Court was too late. In *Louisville and Nashville Railway Co. v. Woodford*, 234 U.S. 46 (1913), discussed on page 4 of this Brief, the federal constitutional issue was raised for the first time in a motion for new trial in the trial court. This court held that that was too late. It follows that raising the issue for the first time in a petition for rehearing before the Illinois Supreme Court was also too late.

II.

THE VILLAGE OF OAK PARK DID NOT DEPRIVE PETITIONERS OF ANY FEDERAL CONSTITUTIONAL RIGHT BY CREATING THE NON-CIVIL SERVICE POSITION OF DEPUTY CHIEF OF POLICE.

Policemen in Illinois cities and villages may be governed by one of two different State Civil Service Acts. A municipality, by referendum, may adopt either the provisions of Division 1 of Article 10 (Civil Service in Cities Act) of the Illinois Municipal Code or Division 2.1 (Fire and Police Commission Act). (Chapter 24, Illinois Revised Statutes, 1975, Article 10, Division 1 and Division 2.1). In addition, Division 2.1 is automatically applicable in cities and villages over 5,000 population that have not adopted Division 1. Division 1 exempts policemen over the rank of captain from civil service. Division 2.1 only exempts the chief. Oak Park was originally governed by Division 2.1. Pursuant to its home rule powers, under the Illinois Constitution (Article 7, Constitution of the State of Illinois, Section 6a), Oak Park adopted an ordinance exempting deputy chiefs from civil service, so in effect, civil service is applicable in Oak Park on the same basis as if it were governed by Division 1. This case was tried in the Illinois Courts on the basis of whether or not this act by Oak Park was a valid exercise of its home rule powers, pursuant to the Illinois Constitution. The Trial Court and the Illinois Supreme Court both held that it was a valid exercise of power.

By vesting authority in the City Manager to appoint and discharge the Chief of Police and three Deputy Chiefs of Police, the Oak Park ordinance has not deprived Patrolman Stryker or Sergeant Woitovich of a property right protected by the Fourteenth Amendment of the United States Constitution. In *Bishop v. Wood*, #74-1304,

44 L.W. 4820, this Court has held that policemen do not have a property interest in their employment guaranteed by the Fourteenth Amendment. It should be noted that this case does not involve any attempt to deprive the petitioners of their position in the police department, nor does it remove them from civil service. The ordinance merely provides that promotions to Deputy Chief of Police will be by the Village Manager rather than through the Civil Service procedure. This is similar to the practice in Illinois municipalities governed by Division 1 for over 30 years.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Writ of Certiorari not be issued to review the judgment of the Supreme Court of the State of Illinois.

Respondents, The Village of Oak Park,
Illinois and Board of Fire and Police
Commissioners of the Village of Oak
Park, Illinois

By: Arthur C. Thorpe, Their Attorney

KLEIN, THORPE, KASSON & JENKINS
111 W. Washington Street
Chicago, Illinois 60602
FI. 6-9740

APPENDIX

STATE OF ILLINOIS)
COUNTY OF COOK) SS

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS

COUNTY DEPARTMENT—LAW DIVISION

PEOPLE OF THE STATE OF ILLINOIS EX REL.
JAMES STRYKER and WALTER WOITOVICH,
Plaintiffs

-vs-

THE VILLAGE OF OAK PARK, ILLINOIS and
BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE VILLAGE OF OAK PARK,
Defendants

No. 74 L 6893

AMENDED COMPLAINT FOR DECLARATORY
JUDGEMENT
(Filed Nov 20 1974)

NOW COME THE PLAINTIFFS, JAMES STRYKER
and WALTER WOITOVICH, by their attorney, STAN-
LEY H. JAKALA, and for cause of action against the
defendants, THE VILLAGE OF OAK PARK, ILLINOIS
and BOARD OF FIRE AND POLICE COMMISSIONERS
OF THE VILLAGE OF OAK PARK, state
as follows:

1. That this is a suit of law for a declaratory judgment
in a case of actual controversy pursuant to section 57.1
of the Civil Practice Act, *Ill Rev Stats, Chap 110, Sub-
sec 57.1.*

2. That the plaintiffs are police officers for the Village
of Oak Park, in the State of Illinois.

3. That prior to April 15, 1974, the said officers were subject to and governed by the Fire and Police Commission of the Village of Oak Park.

4. That the Fire and Police Commission of the Village of Oak Park was governed by the Fire and Police Commissioners Act of the State of Illinois, which act establishes policies for governing police departments including, but not limited to, the promotion of police officers, based upon promotional examinations.

5. That the aforesaid act does not exempt any police officer from being subject to it.

6. That on April 15, 1974, the Village of Oak Park amended Chap 36 Sec 36.1 of its ordinances by creating the positions of Chief of Police, three Deputy Chiefs of Police, and such other officers and personnel as shall be determined by the President and Board of Trustees. It further abolished the rank of Captain, a copy of said ordinance is hereby attached and made part of this Amended Complaint and is marked Exhibit A.

7. That the Village of Oak Park further amended Chap 36, Sec 36.8 of its ordinances by providing that the Village Manager shall be authorized to appoint, suspend, or discharge the Chief of Police, and the three Deputy Chiefs of Police, a copy of said amending ordinance is attached and made part of this Amended Complaint and marked Exhibit B.

8. That the aforesaid amends and violates the spirit and principle of the Fire and Police Commissioners Act of the State of Illinois in that it amends and attempts to circumvent the power of the Fire and Police Commission to promote and discharge police officers.

WHEREFORE, PLAINTIFFS PRAY as follows:

A. That the Court find and decree that the amending ordinances violate the Fire and Police Commissioners Act of the State of Illinois and thus should be stricken and set aside with no force and effect.

B. That the rank of Captain be reinstituted and that the ranks of the three Deputy Chiefs of Police be abolished.

C. That appointments to the rank of Deputy Chiefs be vacated and be declared null and void.

/s/ James Stryker

James Stryker, Plaintiff

/s/ Walter Voitovich

Walter Voitovich, Plaintiff

COUNT II

NOW COME THE RELATORS, JAMES STRYKER and WALTER WOITOVICH, by their attorney, STANLEY H. JAKALA, and for cause of action against the defendants, THE VILLAGE OF OAK PARK, ILLINOIS and THE BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF OAK PARK, state as follows:

1. That this is a suit at law for a declaratory judgment in a case of actual controversy pursuant to Section 57.1 of the Civil Practice Act, *Ill Rev Stats, Chap 110, Subsec 57.1*.

2. That the relators are police officers for the Village of Oak Park, in the State of Illinois.

3. That prior to April 15, 1974, the said officers were subject to and governed by the Fire and Police Commission of the Village of Oak Park.

4. That the Fire and Police Commission of the Village of Oak Park was governed by the Fire and Police Commission Act of the State of Illinois, which act establishes policies for governing police departments including, but not limited to, the promotion of police officers, based upon promotional examinations.

5. That the aforesaid act does not exempt any police officer from being subject to it.

6. That on April 15, 1974, the Village of Oak Park, amended Chap 36 Sec 36.1 of its ordinances by creating the positions of Chief of Police, three Deputy Chiefs of Police, and such other officers and personnel as shall be determined by the President and Board of Trustees. It further abolished the rank of Captain, a copy of said ordinance is hereby attached and made of this Amended Complaint and is marked Exhibit A.

7. That the Village of Oak Park further amended Chap 36 sec 36.8 of its ordinances by providing that the Village Manager shall be authorized to appoint, suspend or discharge the Chief of Police and the three Deputy Chiefs of Police, a copy of said amending ordinance is attached and made part of this Amended Complaint and marked Exhibit B.

8. That the aforesaid amends and violates the spirit and principle of the Fire and Police Commission Act of the State of Illinois in that it amends and attempts to circumvent the power of the Fire and Police Commission to promote and discharge police officers.

WHEREFORE RELATORS PRAY for the issuance of a writ of mandamus out of and under the seal of the Clerk of the Court directed to and against the defendants commanding them to take all steps necessary and requisite to the end that the pending Village of Oak Park ordinance, Chap 36 Sec 36.1 as amended, be of no effect and that the Fire and Police Commission of the Village of Oak Park conform to the Fire and Police Commissioners Act of the State of Illinois; for the entry of an order awarding costs to relators and for the entry of such other and further orders as justice may require.

/s/ James Stryker
James Stryker, Plaintiff

/s/ Walter Voitovich
Walter Voitovich, Plaintiff

COUNT III

NOW COME THE PLAINTIFFS, JAMES STRYKER and WALTER WOITOVICH, by their attorney, STANLEY H. JAKALA, and for cause of action against the defendants, THE VILLAGE OF OAK PARK, ILLINOIS and BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF OAK PARK, state as follows:

1. That this is a suit of law for a declaratory judgment in a case of actual controversy pursuant to section 57.1 of the Civil Practice Act, *Ill Rev Stats, Chap 110, Subsec 57.1*.

2. That the plaintiffs are police officers of the Village of Oak Park, in the State of Illinois.

3. That prior to April 15, 1974, the said officers were subject to and governed by the Fire and Police Commission of the Village of Oak Park.

4. That the Fire and Police Commission of the Village of Oak Park was governed by the Fire and Police Commissioners Act of the State of Illinois, which act establishes policies for governing police departments including, but not limited to, the promotion of police officers, based upon promotional examinations.

5. That under the aforesaid act, Chap 24, Sec 10-2.1-3 provides certain qualifications—oath—bond—removal—which provide that a member of the Fire and Police Commission must file an oath and a fidelity bond and must not hold any lucrative political office with the United States, this state, or any political subdivision thereof, including a municipality, and must not be related to by either blood, or marriage, up to the degree of first cousin to any elected official of any given municipality, and must not be a member of the same political party that the other two members of a given board may be.

6. That on, or about, October 8, 1974, the Village of Oak Park amended Chap 2 of the Code of the Village

of Oak Park by adding Article 16 relating to the Board of Fire and Police Commissioners which provides that the Village of Oak Park has abolished the State law governing the selection of members of the Fire and Police Commission as provided under Chap 24 of the Illinois Rev Stats, Sec 10-2.1-3 a copy of the aforementioned Village of Oak Park ordinance is hereby attached and marked Exhibit C.

7. That the amending ordinance of the Village of Oak Park as described in this count eliminates the necessity of filing a bond, and eliminates the requirement that only two members of the Fire and Police Commission can be of the same political party.

8. That the aforementioned ordinance amends and violates the principle of the Fire and Police Commissioners Act of the State of Illinois in that it attempts to circumvent the power of the Fire and Police Commission in the selection of its members, which intent is expressed by one Lee Ellis, Village Manager of the Village of Oak Park, as is evidenced by his remarks to a newspaper reporter, a copy of which newspaper article is attached to this Amended Complaint and marked Exhibit D.

9. That subsequent to the passage of the new ordinance, the Village of Oak Park appointed Gerald McMahon as a new member of the Board of Fire and Police Commissioners of the Village of Oak Park.

10. That on October 26, 1974, Officer James Stryker submitted himself to a Sergeant's examination conducted by the Fire and Police Commissioners of the Village of Oak Park.

11. That on October 26, 1974, Officer Walter Voitovich submitted himself to a Lieutenant's examination conducted by the Fire and Police Commissioners of the Village of Oak Park.

12. That plaintiffs believe that the newly created Article 16 amending the Fire and Police Commissioners

Act as described herein shall prejudice their civil rights as to fairness in selection of Sergeants and Lieutenants by the newly constituted Board of Fire and Police Commissioners.

WHEREFORE, PLAINTIFFS PRAY as follows:

A. That this Court enter a temporary restraining order without bond restraining the defendants from making any appointments to Sergeant or Lieutenant based upon examinations of October 26, 1974 conducted for such ranks until determination of the issues herein.

B. That the Court find and decree that the Village of Oak Park amending ordinance relating to the selection of members of the Board of Fire and Police Commissioners of its Village be held null and void and that such selection be pursuant to *Ill Rev Stats, Chap 24, Sec 10-2.1-3*.

C. For the entry of such other and further orders as justice may require.

/s/ James Stryker

James Stryker, Plaintiff

/s/ Walter Voitovich

Walter Voitovich, Plaintiff

COUNT IV

NOW COME THE RELATORS, JAMES STRYKER and WALTER WOITOVICH, by their attorney, STANLEY H. JAKALA, and for cause of action against the defendants, THE VILLAGE OF OAK PARK, ILLINOIS and BOARD OF FIRE AND POLICE COMMISSIONERS OF THE VILLAGE OF OAK PARK, state as follows:

1. That this is a suit of law for a declaratory judgment in a case of actual controversy pursuant to section 57.1 of the Civil Practice Act, *Ill Rev Stats, Chap 110, Subsec 57.1*.

2. That the plaintiffs are police officers of the Village of Oak Park, in the State of Illinois.

3. That prior to April 15, 1974, the said officers were subject to and governed by the Fire and Police Commission of the Village of Oak Park.

4. That the Fire and Police Commission of the Village of Oak Park was governed by the Fire and Police Commissioners Act of the State of Illinois, which act establishes policies for governing police departments including, but not limited to, the promotion of police officers, based upon promotional examinations.

5. That under the aforesaid act, Chap 24, Sec 10-2.1-3 provides certain qualifications — oath — bond — removal — which provide that a member of the Fire and Police Commission must file an oath and a fidelity bond and must not hold any lucrative political office with the United States, this state, or any political subdivision thereof, including a municipality, and must not be related to by either blood, or marriage, up to the degree of first cousin to any elected official if any given municipality, and must not be a member of the same political party that the other two members of a given board may be.

6. That on, or about, October 8, 1974, the Village of Oak Park amended Chap 2 of the Code of the Village of Oak Park by adding Article 16 relating to the Board of Fire and Police Commissioners which provides that the Village of Oak Park has abolished the State law governing the selection of members of the Fire and Police Commission as provided under Chap 24 of the *Illinois Rev Stats, Sec 10-2.1-3* a copy of the aforementioned Village of Oak Park ordinance is hereby attached and marked Exhibit C.

7. That the amending ordinance of the Village of Oak Park as described in this count eliminates the necessity of filing a bond, and eliminates the requirement that only two members of the Fire and Police Commission can be of the same political party.

8. That the aforementioned ordinance amends and violates the principle of the Fire and Police Commissioners

Act of the State of Illinois in that it attempts to circumvent the power of the Fire and Police Commission in the selection of its members, which intent is expressed by one Lee Ellis, Village Manager of the Village of Oak Park, as is evidence by his remarks to a newspaper reporter, a copy of which newspaper article is attached to this Amended Complaint and marked Exhibit D.

9. That subsequent to the passage of the new ordinance, the Village of Oak Park appointed Gerald McMahon as a new member of the Board of Fire and Police Commissioners of the Village of Oak Park.

10. That on October 26, 1974, Officer James Stryker submitted himself to a Sergeant's examination conducted by the Fire and Police Commissioners of the Village of Oak Park.

11. That on October 26, 1974, Officer Walter Woitovich submitted himself to a Lieutenant's examination conducted by the Fire and Police Commissioners of the Village of Oak Park.

12. That relators believe that the newly created Article 16 amending the Fire and Police Commissioners Act as described herein shall prejudice their rights as to fairness in selection of Sergeants and Lieutenants by the newly constituted Board of Fire and Police Commissioners.

WHEREFORE, RELATORS PRAY for the issuance of a writ of mandamus set out of and under the seal of the Clerk of the Court directed to and against the defendants commanding them to take all steps necessary and requisite to the end that the selection of members of the Board of Fire and Police Commissioners of the Village of Oak Park as amended by its ordinance, Article 16, be held null and void and that the selection of members for the aforesaid board be pursuant to Illinois law and that members selected pursuant to current Illinois law appoint Sergeants and Lieutenants based upon the October 26, 1974 examinations; and for the entry of an order awarding

costs to the relators; and for the entry of such further and other orders as justice may require.

/s/ James Stryker
James Stryker, Plaintiff

/s/ Walter Voitovich
Walter Voitovich, Plaintiff

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

JAMES STRYKER and WALTER WOITOVICH, after first being duly sworn upon oath, deposes and state that they have read the foregoing Amended Complaint for Declaratory Judgment and Mandamus, know the contents thereof, and that the same is true to substance and in fact.

/s/ James Stryker
/s/ Walter Woitovich

Subscribed and sworn to before me
this 5th day of November, 1974.

/s/ Marjorie M. Carlstrom
Notary Public

Stanley H. Jakala
Attorney for Plaintiffs
 3219 Maple Avenue
 Berwyn, Illinois 60402
 788-5733